



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: General Electric Company  
File: B-228191  
Date: December 14, 1987

### DIGEST

1. Bid which takes exception to warranty provisions in invitation for bids renders bid nonresponsive.
2. A bidder is not permitted to make its nonresponsive bid responsive after bid opening by removing an exception to a material solicitation provision because such action would be tantamount to permitting the bidder to submit a new bid.
3. General Accounting Office will consider agency report, even though submitted after the due date, where protester was not prejudiced by the lateness.

### DECISION

General Electric Company (GE) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. HC-17481CSP, issued by the Department of Housing and Urban Development (HUD) for electric refrigerators. GE contends that the agency acted in an arbitrary, capricious and unfair manner in rejecting its bid in that the agency disregarded its previous practice. The protester also objects to HUD's not considering modifications to GE's bid after bid opening which would have made its bid more favorable to the government.

We deny the protest.

The IFB required a 2-year guarantee of the plastic parts of the refrigerator cabinet, beginning on the day of acceptance of the refrigerator by the agency. The IFB also required that the contractor guarantee to repair or replace equipment that becomes inoperative within 12 hours after being notified of such conditions. GE's bid incorporated its own warranty, and took "exception to two parts of the guarantee," stating that, instead of 2 years, "our [plastic parts] warranty is one year," and that GE "cannot guarantee [repair

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or replacement] to always be within 12 hours of notification." HUD rejected the bid as nonresponsive for taking exception to material requirements.

In order to be responsive, a bid must clearly evidence on its face the bidder's intention to comply with, and be bound by, the terms and conditions of the IFB. If a bidder attempts to impose conditions that would modify material requirements of the invitation or limit the bidder's liability to the government, the Federal Acquisition Regulation, 48 C.F.R. § 14.404-2(d) (1986), requires the bid to be rejected; allowing the bidder to impose such conditions would be prejudicial to other bidders. We have held that the terms of a warranty are a material part of an IFB and that a bidder's exception to, or qualification of, an IFB's warranty clause renders its bid nonresponsive. Premier Electric Supply, Inc., B-191184, July 21, 1978, 78-2 CPD ¶ 59. Applying this standard here, GE's bid clearly is nonresponsive because the warranty offered in its bid did not comply with the warranty provisions of the IFB.

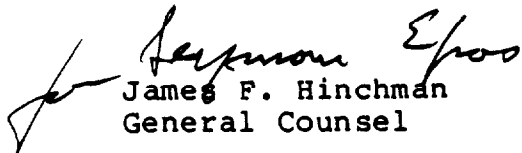
GE contends that even if its exceptions to the terms of the warranty render its bid nonresponsive, HUD should be required to permit GE to submit an amended bid which takes no exception to the warranty specifications and that its bid should be considered on an equal footing with all other bids timely submitted. GE points out in this regard that the IFB permitted acceptance of late modifications which make the terms of a bid more favorable to the Government. We have held, however, that a bidder may not be afforded an opportunity after bid opening to change or alter its bid so as to make it responsive since this is tantamount to permitting the submission of a second bid after the time set for bid opening. Imperial Maintenance, Inc., B-224257, Jan. 8, 1987, 87-1 CPD ¶ 34. A late modification with more favorable terms can be accepted only if the bid as originally submitted was responsive. Harris Contracting, Inc., B-224165, Oct. 7, 1986, 86-2 CPD ¶ 402. This was not the case here.

Further, HUD's alleged previous waiver of the strict terms of the warranty requirements for GE does not preclude HUD from rejecting GE's bid here; an agency's application of correct procedures in a procurement action cannot be challenged based upon its past practices. Kurz & Root Co., Inc., B-219382, July 16, 1985, 85-2 CPD ¶ 55.

GE urges that we disregard HUD's report in this matter because it was submitted after the due date specified in our Bid Protest Regulations, 4 C.F.R. § 21.3(c) (1987). We will consider the contents of a late agency report, however, where, as here, its lateness did not prejudice the

protester. See TIW Systems, Inc., B-222585.8, Feb. 10,  
1987, 87-1 CPD ¶ 140.

The protest is denied.

  
James F. Hinchman  
General Counsel